COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]

Description of case

Criminal Appeal No. 238 of 2001 Decided on 11th July, 2006
(Old No.1260 of 1985)

1. Balwant Singh
2. Dilwar Singh (Since deceased)
3. Manbar Singh
   All Sons of Tara Singh,
   R/o Village Bhainswara, Patti Khatayun,
   District Pauri Garhwal.

4. Rajan Alias Rajendra Singh (Since deceased)
   S/o Narayan Singh,
   R/o Village Kalon, Patti Khatayun,
   District Pauri Garhwal.

……. Appellants

Versus

The State …….. Respondent

Mr. S.S. Negi, Advocate for the appellants.
Mr. D.K. Sharma, Government Advocate for the respondent-State.

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date 11.07.2006

(Initials of Judges)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 238 of 2001
(Old No. 1260 of 1985)

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Coram : Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

Dt: July 11, 2006.

[Per Hon'ble Prafulla C. Pant, J.]

This appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity hereinafter Cr.P.C.), is directed against the judgment and order dated 09.05.1985, passed in Sessions Trial No. 19 of 1982, by the then learned Sessions Judge, Pauri Garhwal, whereby, accused / appellants Balwant Singh, Dilwar Singh, Manbar Singh and Rajan (all the four appellants in this appeal) and

one Bharat Singh have been convicted under Section 302 read with Section 149 of the Indian Penal Code, 1860 (for brevity hereinafter I.P.C.) and each one of them has been sentenced to imprisonment for life. They have further been convicted under Section 307 read with Section 149 of the I.P.C., and each one of them has been sentenced to rigorous imprisonment of four years.

2) We hared learned counsel for the parties and perused the entire record.

3) Prosecution story, in brief, is that on 17.06.1982, at about 9:30 P.M., due to enmity, accused / appellants Balwant Singh, Dilwar Singh, Manbar Singh and Rajan along with Bharat Singh, armed with deadly weapons and lathis, raided the house of Ganga Singh (P.W. 2), resident of village Bhainswara, Patti Khatsyun, District Pauri Garhwal. All the five accused / appellants, after forming unlawful assembly, with common object, committed murder of Sultan Singh (brother of Ganga Singh) and attempted to commit murder of Ganga Singh (P.W. 2). The incident was also witnessed by P.W. 3, Sampati Devi, wife of Ganga Singh. The First Information Report (Ext. A –1) of the incident was lodged by Amar Singh (P.W. 1) on 18.06.1982, at about 9:00 A.M., with Patti Patwari Khatsyun (In Uttaranchal hills, in rural areas, Revenue Officers are given police powers by the State). Madan Mohan Uniyal (P.W. 4), incharge Patwari of Patti Khatsyun, prepared check report (Ext. A –2) on the basis of the First Information Report, lodged by Amar Singh. He made necessary entry in the general dairy. Thereafter, the

Patwari went to the spot and started investigation of the crime. After taking the dead body of Sultan Singh in his possession, Patwari Madan Mohan Uniyal (P.W. 4) prepared the inquest report (Ext. A –3) and other necessary papers, and sent the dead body for postmortem examination. Dr. V.K. Saxena, Medical Officer conducted autopsy on the dead body of Sultan Singh on 19.06.1982 and opined that the deceased has died of coma due to head injury. Formal proof of the postmortem examination report (Ext. A –10) was dispensed with by the defence. Before that, Dr. V.K. Saxena, Medical Officer, District Hospital Pauri also examined the injuries found on the person of Ganga Singh, P.W. 2 on 18.06.1982 and prepared medical examination report (Ext. A –9). Defence admitted genuineness of this document also. The Investigating Officer recorded the statement of the witnesses and prepared the site plan (Ext. A –4). P.W. 4, Madan Mohan Uniyal, Patwari / Investigating Officer during investigation collected the lantern in the light of which witnesses saw the occurrence and prepared memo Ext. A –5. He further collected blood stained clothes of the deceased and prepared memo Ext. A –6. The Investigating Officer took simple and blood stained soil / stone from the place of occurrence and prepared memo Ext. A –7. On completion of the investigation, the Investigating Officer submitted charge sheet (Ext. A –8) to the concerned Magistrate for trial of all the five accused persons for the offence allegedly committed by them punishable under Section 302/ 307 / 326 of the I.P.C.

4) The Magistrate concerned, on receipt of the charge sheet and after registering the same, appears to have committed the case to the court of Sessions for trial, after giving necessary copies to the accused persons, as required under Section 207 of the Cr.P.C. Learned Sessions Judge, after hearing the prosecution and the defence, framed charge of the two heads against all the five accused persons namely, Balwant Singh, Dilwar Singh, Manbar Singh, Rajan and Bharat Singh for the offence allegedly committed by them punishable under Section 302 / 149 of the I.P.C. and the one punishable under Section 307 / 149 of the I.P.C. All the five accused persons, including the four present appellants, pleaded not guilty and claimed to be tried. On this, the prosecution got examined P.W. 1, Amar Singh, informant; P.W. 2, Ganga Singh, injured eyewitness; P.W. 3, Sampati Devi, another eyewitness and wife of Ganga Singh, and P.W. 4, Patwari Madan Mohan Uniyal, the Investigating Officer. Learned Sessions Judge put the entire oral as well as documentary evidence to the accused persons under Section 313 of Cr.P.C., to which in their reply, the accused persons alleged that the evidence is false. The accused persons Balwant Singh and Manbar Singh, who are brothers, alleged that since they lodged an First Information Report, before the date of incident, against Ganga Singh regarding commission of murder of a girl named Usha, as such, due to that enmity they have been falsely implicated in the case. In defence, D.W. 1, Swaroop Chand has been examined. However, the said witness has not supported the defence, instead he has denied having meals with accused Balwant Singh on the

date and time of incident. After hearing the prosecution and learned counsel for the accused persons, learned trial court found all the five accused persons namely, Balwant Singh, Dilwar Singh, Manbar Singh, Rajan and Bharat Singh guilty of the offences punishable under Section 302 / 149 of the I.P.C. and under Section 307 / 149 of the I.P.C. The trial court after hearing on sentence, sentenced each one of the convict / appellants to imprisonment for life under Section 302 / 149 of the I.P.C., and four year's rigorous imprisonment under Section 307 / 149 of the I.P.C. Aggrieved by the said judgment and order of the trial court, this appeal is preferred by four of the accused / appellants namely Balwant Singh, Dilwar Singh, Manbar Singh and Rajan, before the Allahabad High Court, in the year 1985. The appeal is received by this Court, by transfer under Section 35 of the U.P. Re-organization Act, 2000, for its disposal. Meanwhile, accused / appellant Dilwar Singh and Rajan are reported to have died and appeal filed by them stands abated.

5) Before further discussion, it is pertinent to mention here, the ante mortem injuries found on the dead body of Sultan Singh, at the time of autopsy. Postmortem examination report (Ext. A –10), prepared by Dr. V.K. Saxena on 19.06.1982 (genuineness of the document is admitted by the defence), discloses following ante mortem injuries on the dead body of the deceased:

i) ***Incised wound on the forehead measuring 5 cm X 2 cm X bone deep; 5.5 cm above from between two eyebrows.***

ii) ***Incised wound on right side forehead extending from outer side of right eyebrow 4 cm X 2 cm X bone deep.***

iii) ***Incised wound just above injury No. 2, measuring 2 cm X 0.5 cm X bone deep.***

iv) ***Lacerated wound right side of lower lip dividing lower lip into two measuring 3 cm X 0.5 cm.***

v) ***Fracture of mandible at the junction of two rows at two sites vertically placed. Fractured fragment containing three teeth in which one loose in its socket.***

vi) ***Multiple contusions over whole outer side of left upper arm Red in colour.***

vii) ***Punctured wound left upper arm on its outer side, 5 cm above left elbow joint measuring 1 cm X 0.5 cm X 2.5 cm deep.***

viii) ***Multiple abrasions over back of left elbow joint in the area of 9 cm X 7 cm. Soft scab present.***

ix) ***Contusion outer side of left forearm 16 cm X12 cm extending from left writ joint. Abrasion over contused area 8 cm above left wrist joint measuring 6 cm X 1 cm. Red in colour.***

x) ***Contusion right upper arm over outer side 10 cm X 6 cm, situated 8 cm below right shoulder joint. Red in colour.***

xi) ***Contusion right back of upper arm extending upwards from posterior axillary fold measuring 10 cm X 4 cm. Red in colour,***

xii) ***Abrasion over back of chest right side 2 cm above posterior axillary fold measuring 4 cm X 2 cm. Soft scab present.***

xiii) ***Multiple red contusions over whole of back of chest and abdomen.***

xiv) Multiple red contusions front of left thigh in an area of 18 cm X 8 cm. contusions horizontally placed.

xv) Abrasion left side of thigh in front 16 cm above left knee joint measuring 4 cm X 2 cm. Soft scab present.

xvi) Two abrasions left lower leg 6 cm below left knee joint in front, measuring 6 cm X 3 cm. soft scab present.

xvii) Multiple horizontally placed contusion over left calf in an area of 8 cm X cm. Red in colour.

xviii) Incised wound right lower leg 5.5 cm above medial malleobes, measuring 2 cm X 1 cm X bone deepn.

xix) Multiple red, horizontally placed contusions right calf in an area of 8 cm X 4 cm.

xx) Multiple incised wound over left side of scalp 9 cm above left prima in an area of 6 cm X 5 cm X bone deep.

xxi) Abraded contusion over occipital area 8 cm X 4 cm. On cutting the skull sub-ceponeurotic haematoma present underneath the contusion.

In the opinion of the Medical Officer, who conducted the autopsy, the cause of death was coma due to head injury.

6) One day before the postmortem examination i.e. on 18.06.1982, at 10:30 A.M., the same Medical Officer, Dr. V.K. Saxena also examined injuries found on the person of Ganga Singh (P.W. 2) in the District Hospital, Pauri, and prepared the injury report (Ext. A –9) [genuineness of said report is admitted to the defence]. He found following injuries on the person of Ganga Singh:

i) ***Lacerated wound two in number over scalp 16.5 cm away from left upper tip of pima, measuring 3.5 cm X 0.5 cm X skin deep; second measuring 6 cm X 0.5 cm X skin deep, soft scab present over both the wounds, bleeds easily.***

ii) ***Multiple abraded contusions over back of left forearm in an area of 26 cm X 7 cm, extending between left writs joint to left elbow joint. Red in colour, abraded area having soft scabs.***

iii) ***Multiple contusions over right back of shoulder joint in an area of 18 cm X 18 cm. Reddish in colour.***

iv) ***Abrasion measuring 3 cm X 2 cm over injury No. 3.***

v) ***Contusion over back of chest and abdomen over right side measuring 12 cm X 3 cm. Horizontally placed, red in colour, 3 cm away from tip of spine.***

vi) ***Contusion just below injury No. 5 extending towards left side of back of abdomen measuring 16 cm X 3 cm. Red in colour.***

vii) ***Contusion over left side back of chest measuring 13 cm X 3 cm, red in colour. 4 cm below left lower end of scapula. .***

viii) ***Reddish contusion over top of left shoulder joint measuring 5 cm X 5 cm.***

ix) ***Reddish contusion of left upper arm outside 8 cm X 4 cm, horizontally placed 24 cm above left elbow joint.***

x) ***Abrasion over left forearm 5 cm above left wrist joint, measuring 3 cm X 2 cm.***

xi) ***Contusion over right knee joint measuring 16 cm X 12 cm. Boney tenderness present.***

xii) ***Lacerated wound on right leg 2 cm below right knee joint measuring 5.5 cm X 0.5 cm X skin deep. Soft scab present.***

xiii) Reddish contusion over inner side of right thigh measuring 9 cm X 2 cm.

Injury Nos. 3, 4, 8 and 11 were kept under observation. X-ray was advised by the Medical Officer. Rest of the injuries were simple in nature. According to the Medical officer all the injuries sustained by P.W. 2, Ganga Singh were caused by some blunt object.

7) P.W. 2, Ganga Singh, the injured eyewitness has stated that on 17.06.1982, at about 9:30 P.M., he was in his house with his wife and children. At the time of the incident he was talking with his brother Sultan Singh (deceased). There was light of lantern in the house. According to this witness, suddenly someone threw a stone at his door. On this, his brother Sultan Singh (deceased) who was having a torch of three batteries came out and flashed the torch. P.W. 2, Ganga Singh saw that accused / appellants Balwant Singh, Dilwar Singh, Manbar Singh and Rajan with Bharat Singh are there who attacked Sultan Singh (deceased). According to this witness, accused / appellant Balwant Singh was armed with ‘Khukari’ (a sharp edged weapon) and other were armed with lathies. When Ganga Singh came out, he was also attacked by the accused persons who injured him. The witness further states that after receiving injury of ‘Khukari’, caused by Balwant Singh, he fell down. However, even after he fell on the ground, accused Dilwar Singh and others accused gave lathi blows on his person. When the accused persons saw that he (P.W. 2, Ganga Singh) is unable to move they thought him to have been died and started causing injuries again to Sultan Singh. Initially, Sultan Singh grappled with

Balwant Singh, but when he was caused injury by ‘Khukari’ on his head, he also fell down. Thereafter, accused persons left the place. P.W. 2, Ganga Singh has stated that his wife also witnessed the incident from the window. The witness further states that in the night there was no conveyance available to take Sultan Singh to Hospital and only in the morning, at 5:00 A.M., he (Sultan Singh) was taken by his wife and one Shankar Singh to Hospital on foot. However, by 7:00 A.M. (on 18.06.1982) Sultan Singh died of the injuries. Thereafter, at about 8:30 A.M, when taxi came from Pauri, according to this witness (P.W. 2) he was also taken to hospital where he was medically examined. P.W. 2, Ganga Singh states that his family had enmity with the family of Balwant Sinch as a complaint was lodged by his family against the family of Balwant Singh that they distill illicit liquor.

8) Statement of P.W. 2, Ganga Singh gets full corroboration from the nature of injuries recorded in Ext. A –9. His Statement also gets corroborated from the ante mortem injuries recorded in the postmortem examination report Ext. A –10, pertaining to Sultan Singh. P.W. 3, Sampati Devi also corroborates the prosecution story, narrated by her husband P.W. 2, Ganga Singh. Presence and narration of story by P.W. 3, Sampati Devi is natural and trustworthy. There was sufficient light of lantern and that of the torch in which the accused persons, who were known to the above eyewitnesses, could be recognized when they attacked Sultan Singh and Ganga Singh. P.W. 1, Amar Singh, who reached at the spot soon after the

incident, has proved First Information Report (Ext. A –1) lodged by him with the Patti Patwari.

9) Mr. S.S. Negi, learned counsel for the appellants argued that the postmortem report and the injury report are not proved by the prosecution witnesses before the trial court. On examination of the record, we find that the argument of learned counsel for the appellants is misconceived, for the reason that there is endorsement of the defence counsel before the trial court, dispensing with the formal proof and admitting the genuineness of documents Ext. A –9 and Ext. A –10, which are injury report of Ganga Singh and postmortem examination report of Sultan Singh, respectively.

10) Next submission made on behalf of the appellants before us is that Deveshwari Devi, wife of Sultan Singh (deceased) who took Sultan Singh to the Hospital in early hours on 18.06.1982, was not examined by the prosecution. This, in our opinion, does not create any doubt in the prosecution story as she was not an eyewitness of the incident.

11) Mr. Negi, learned counsel for the appellants contended that the Investigating Officer did not take into possession the torch in the light of which occurrence was allegedly seen by the eyewitnesses, as such, it cannot be believed that the incident was witnessed in the light of the torch. We find little substance in the contention of the learned counsel for the reason that for mere this mistake on the part of the Investigating Officer the eyewitness account

given by the prosecution witnesses P.W. 2, Ganga Singh (injured) and P.W. 3, Sampati Devi, cannot be disbelieved, particularly, when the accused persons were known to them and there was also light of the lantern in the house.

12) For the reasons, as discussed above, we do not see any ground to interfere with the impugned judgment and order, passed by the trial court. The conviction and sentence awarded against the accused / appellants Balwant Singh and Manbar Singh is maintained. Accordingly, their appeal is dismissed. The accused / appellants Balwant Singh and Manbar Singh are on bail. Their bail is cancelled. They shall be taken into custody forthwith by the court concerned to make them serve out the sentence. (Appeal filed by appellant No. 2 Dilwar Singh and appellant No. 4 Rajan, in view of their death, stands abated).

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt. July 11, 2006.
H. Negi